

May 3, 2004

NANCY WHITTEN
P O BOX 1294
ISSAQUAH WA 98027

Subject: Complaint Filed Against Mike Rundle - PDC Case No. 04-295

Dear Ms. Whitten:

The Public Disclosure Commission staff has completed its investigation of your complaints, received October 27 and 29, 2003, alleging that Mike Rundle sponsored political advertising that contained false statements of material fact about you, in violation of RCW 42.17.530.

The PDC staff reviewed your allegations in light of the following statute:

RCW 42.17.530 prohibits a person from sponsoring with actual malice political advertising that contains a false statement of material fact about a candidate for public office. "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

RCW 42.17.505 states that "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity."

You alleged that Mike Rundle made a false statement of material fact about you when he posted, on his web site on October 19, 2003, an email from a Karen Moran supporter that included Ms. Moran's response to that email. You alleged that the e-mail with Ms. Moran's response falsely accused you of sponsoring a postcard mailing known as the "Trail Buster" postcard. You further alleged that when Mr. Rundle posted a revised version of the email response on his web site, he again falsely accused you of sponsoring the Trail Buster postcard.

We found that:

- It is not known who authored, produced or distributed the Trail Buster postcard. Although the sponsor identification on the postcard attributed it to "Citizens to elect Karen Moran," Ms. Moran has denied responsibility for it, noting her belief

that someone opposing Ms. Moran was likely responsible for the mailing. You have also denied mailing the piece. It has never been determined who was responsible for the postcard mailing.

- Karen Moran issued a press release on October 19, 2003, stating that the postcard was not produced by her campaign. She stated, *"The flyer is a malicious and inflammatory tactic by my opponent to misrepresent my position on a very sensitive issue...I will be attempting to determine for certain the party responsible for this mailing and I will be contacting the U.S. Postal Service regarding the filing of federal charges for mail fraud..."* (Emphasis added)
- On October 19th, Ms. Moran answered an email received from a supporter who asked about the postcard mailing. She responded with, *"The mailing you received was a malicious attack from my opponent...I would appreciate your telling everyone you know that this was not my literature, and point out the level to which my opponent has sunk in an attempt to win this election."* (Emphasis added) Mike Rundle posted the email and Karen Moran's response on his web site on October 19th.
- On October 28th, Karen Moran amended the press release posted on her web site by deleting the words "by my opponent" so that it read, *"The flyer is a malicious and inflammatory tactic to misrepresent my position on a very sensitive issue."* On the same date, Ms. Moran amended her email response by deleting the words, "a malicious attack from my opponent," so that it read, *"The mailing you received was attempting to confuse the voters regarding my position on the issues."* The amended email also deleted the words, "my opponent has sunk" so that it read, *"I would appreciate your telling everyone you know that this was not my literature, and point out the level to which someone has sunk n an attempt to win this election."*
- Mr. Rundle posted the amended email on his web site on or about October 28, 2003, but left the date of the email as October 19, 2003.

Mr. Rundle stated that he posted the email on his web site to provide information to his supporters since he believed the mailing made untrue statements about his campaign. He stated that he spoke to you on the telephone about the postcard mailing, and that after speaking with you, the e-mail response was amended. Initially, it included the wording, *"The mailing you received was a malicious attack from my opponent...I would appreciate your telling everyone you know that this was not my literature, and point out the level to which my opponent has sunk in an attempt to win this election."* (Emphasis added) After speaking with you, the e-mail was amended to include the wording, *"The mailing you received was attempting to confuse the voters regarding my position on the issues."* Because Mr. Rundle immediately corrected the e-mail after realizing that it might be seen as accusing you of sponsoring the Trail Buster postcard, there is not clear and convincing evidence that he acted with reckless disregard as to truth or falsity.

Complaint Against Mike Rundle

PDC Case No. 04-295

Page - 3 –

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against the Mike Rundle.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Karen Moran